

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE A. SMITH

Claimant

VS.

EQUICOR HEALTH CARE PLAN, INC.

Respondent

AND

**FIREMAN'S FUND INSURANCE COMPANY, and
CIGNA INSURANCE COMPANY**

Insurance Carriers

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 163,606

ORDER

The Appeals Board has considered the Applications for Review of the March 11, 1994 Award by Special Administrative Law Judge William F. Morrissey.

APPEARANCES

The claimant appeared by and through her attorney, Andrew E. Busch of Wichita, Kansas. The respondent and Fireman's Fund Insurance Company appeared by and through their attorney, Gary A. Winfrey of Wichita, Kansas. Respondent and CIGNA Insurance Company appeared by and through their attorney, D. Steven Marsh of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, John C. Nodgaard of Wichita, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is the same as that enumerated in the Award of the Special Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Special Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The claimant, in her Application for Review, seeks review of the following issue:

- (1) Nature and extent of disability.

The respondent and Fireman's Fund Insurance Company, in their Application for Review, seek review of the following issues:

- (1) Timely written claim.
- (2) Whether the liability of Fireman's Fund Insurance Company is limited to injuries occurring within their policy period.
- (3) Gross average weekly wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The finding of the Special Administrative Law Judge that claimant has sustained a fifteen percent (15%) permanent partial loss of use of the right forearm should be affirmed.

The Award of the Special Administrative Law Judge sets out the findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. Claimant began working for respondent on June 19, 1986, and her employment ended July 19, 1991. She alleges accident commencing December 19, 1988 and each working day thereafter. Claimant developed numbness and tingling symptoms in her right hand, fingers and wrist in approximately June or July 1988. She first sought medical treatment for this condition with Dr. Jay Stanley Jones on October 27, 1988. At that time she related to Dr. Jones that her numbness in her right hand had been going on for approximately six (6) months. Dr. Jones felt claimant had carpal tunnel syndrome. In January 1990, Dr. Jones diagnosed claimant as having de Quervain's disease and on April 8, 1991, he performed surgery on her right wrist for this condition. Dr. Jones continued to treat claimant up through and beyond her last day of employment with the respondent.

The Special Administrative Law Judge found claimant met with personal injury by accident to her right wrist arising out of and in the course of employment with respondent by a series of accidents from late 1990 culminating on March 28, 1991. The Appeals Board would modify this finding to hold that claimant has established her date of accident to be as alleged, by a series of accidents from 1988 and each and every day worked thereafter through July 19, 1991. Following the bright line rule established by the Kansas Court of Appeals in the case of Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220 (1994), the date of accident for claimant's repetitive-use condition is held to be July 19, 1991, the last day she worked for respondent. Liability for this workers compensation claim will rest with the respondent and its insurance carrier providing coverage on the claimant's July 19, 1991 date of accident, as heretofore established. See also, Helms v. Tollie Freightways, Inc., 20 Kan. App. 2d 548 (1995).

The finding by the Special Administrative Law Judge that claimant made timely written claim is affirmed. The remaining issues raised by respondent and Fireman's Fund Insurance Company, to wit, the liability of Fireman's Fund Insurance Company and gross average weekly wage, are rendered moot by the above finding by the Appeals Board concerning date of accident.

The Appeals Board otherwise adopts all findings made by the Special Administrative Law Judge not inconsistent with the expressed rulings made herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, entered in this

proceeding on March 11, 1994, should be, and hereby is, modified to find date of accident to be July 19, 1991, claimant's last day of work, and the liability for compensation, medical expenses and costs should be borne by the respondent and insurance carrier providing coverage on said date. The Award is otherwise affirmed in all respects and the orders contained in said Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Gary A. Winfrey, Wichita, KS
D. Steven Marsh, Wichita, KS
John C. Nodgaard, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director